IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

SUMMONS FOR JUDGMENT NO.202 OF 2006

IN

SUMAMRY SUIT NO.499 OF 2006

...

Ameya Developers Pvt.Ltd. ...Plaintiff

v/s.

PBA Infrastructure Ltd. ...Defendant

...

Mr.J.P.Sen i/b R.M.Azim for the Plaintiff.

Mr.M.M.Vashi for the Defendant.

CORAM: D.K.DESHMUKH, J.

DATED: 12TH SEPTEMBER,2006

P.C.:

1. According to the Plaintiff the suit claim of the Plaintiff is based on the ledger extract of the Defendant showing that an amount of Rs.1,90,84,919/- is due to the Plaintiff from the Defendant.

2. According to the Defendant, however, the suit of the Plaintiff is based on Running Account Bill Nos. 10, 11, & 12, as can be seen from the particulars of the claim at Exh.A.

3. In my opinion, in either case there is substantial defence available to the Defendant. Because even after filing rejoinder the Plaintiff has not clarified as to on what date the Defendant handed over the alleged ledger account to the Plaintiff. It is nowhere clarified that as to on what date and what was the occasion for the Defendant to hand over copy of the ledger account to the Plaintiff. If the suit is based on running account bill, obviously, there is no written contract and therefore, summary suit is not maintainable. To say the least the defence put up by the Defendant cannot be termed as merely a moon shine defence, and therefore, in my opinion, it will not be appropriate to pass a decree in favour of the Plaintiff by following summary procedure. Summons for judgment is disposed of. Defendant is granted unconditional leave to defend the suit. Suit be transferred to commercial cause list. Written statement to be filed within eight weeks from today.

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